

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1280

Introduced by Senator Morrow

February 10, 2006

~~An act to add Section 2357.5 to the Probate Code, relating to incapacitated persons. An act to add Part 6 (commencing with Section 4900) to Division 4.7 of the Probate Code, relating to legally incapable persons.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1280, as amended, Morrow. ~~Incapacitated~~ *Legally incapable* persons.

Existing law authorizes a guardian, a conservator, or a court, under specified circumstances, to make health care decisions for a ward or a conservatee who lacks the capacity to give his or her informed consent to medical treatment. Under certain circumstances, a court may also make an order authorizing the withholding or withdrawing of artificial nutrition and hydration from an incapacitated adult who does not have a conservator.

~~This bill would prohibit a guardian, a conservator, or the court from authorizing the withholding of food and water from a ward or conservatee, or an adult without a conservator, unless there is clear and convincing evidence that either withholding nutrition and hydration is in accordance with the instructions or wishes of the person or that the person cannot absorb nutrition or hydration so as to sustain his or her life, as specified~~ *enact the Starvation and Dehydration of Persons with Disabilities Prevention Act. The bill would provide that a legally incapable person, as defined, is presumed to have directed health care providers to provide him or her with*

nutrition and hydration to a degree that is sufficient to sustain life. The bill would prohibit a guardian, surrogate, public or private agency, court, or any other individual from having the authority to make a decision on behalf of a legally incapable person to withhold or withdraw hydration or nutrition from that person, except as specified.

The bill would further specify that the presumption in favor of providing nutrition and hydration set forth above does not apply to a legally incapable person if, based on reasonable medical judgment, the provision of nutrition or hydration is not medically possible or would hasten death, the person is not able to digest or absorb the nutrition or hydration so that providing these would not contribute to sustaining the person's life, or the person has authorized an advance health care directive or other consent authorizing the withholding or withdrawal of nutrition or hydration, as specified.

The bill would also authorize specified persons and public officials to bring a cause of actions for injunctive relief and for a judicial determination of whether a legally incapable person, before becoming incapacitated, gave express and informed consent to the withdrawing or withholding of hydration and nutrition.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Part 6 (commencing with Section 4900) is added*
2 *to Division 4.7 of the Probate Code, to read:*

3
4 *PART 6. STARVATION AND DEHYDRATION OF PERSONS*
5 *WITH DISABILITIES PREVENTION ACT*

6
7 *4900. This act shall be known and may be cited as the*
8 *Starvation and Dehydration of Persons with Disabilities*
9 *Prevention Act.*

10 *4901. As used in this part:*

11 *(a) "Express and informed consent" means consent*
12 *voluntarily given with sufficient knowledge of the subject matter*
13 *involved, including a general understanding of the procedure,*
14 *the medically acceptable alternative procedures or treatments,*
15 *and the substantial risks and hazards inherent in the proposed*
16 *treatment or procedures, to enable the person giving consent to*

1 *make an knowledgeable and enlightened decision without any*
2 *element of force, fraud, deceit, duress, or other form of*
3 *constraint or coercion.*

4 *(b) “Nutrition” means sustenance administered by way of the*
5 *gastrointestinal tract.*

6 *(c) “Legally incapable person” means a person who has been*
7 *declared by a court to be legally incompetent to make decisions*
8 *affecting medical treatment or care, or in the reasonable*
9 *judgment of the primary physician, is unable to make decisions*
10 *affecting medical treatment or other health care services, or is a*
11 *minor.*

12 *(d) “Reasonable medical judgment” means a medical*
13 *judgment that would be made by a reasonably prudent physician,*
14 *knowledgeable about the case and the treatment possibilities*
15 *with respect to the medical conditions involved.*

16 4902. *(a) A legally incapable person is presumed to have*
17 *directed health care providers to provide him or her with*
18 *nutrition and hydration to a degree that is sufficient to sustain*
19 *life.*

20 *(b) A guardian, surrogate, public or private agency, court, or*
21 *any other individual shall not have the authority to make a*
22 *decision on behalf of a legally incapable person to withhold or*
23 *withdraw hydration or nutrition from that person, except as*
24 *provided in subdivision (c).*

25 *(c) The presumption set forth in subdivision (a) shall not apply*
26 *to a legally incapable person if any of the following*
27 *circumstances is present:*

28 *(1) Based on reasonable medical judgment:*

29 *(A) The provision of nutrition or hydration is not medically*
30 *possible.*

31 *(B) The provision of nutrition or hydration would hasten*
32 *death.*

33 *(C) Due to the medical condition of the legally incapable*
34 *person, that person is not able to digest or absorb the nutrition*
35 *or hydration, so that providing these would not contribute to*
36 *sustaining the person’s life.*

37 *(2) The person has executed an advance health care directive,*
38 *which is in effect in accordance with Chapter 1 (commencing*
39 *with Section 4670) of Part 2, specifically authorizing the*

1 *withholding or withdrawal of nutrition or hydration, to the extent*
2 *the authorization applies.*

3 *(3) There is clear and convincing evidence that the person,*
4 *when legally capable of making health care decisions, gave*
5 *express and informed consent to the withdrawing or withholding*
6 *of hydration or nutrition in the applicable circumstances.*

7 *4903. (a) The following causes of action may be brought*
8 *pursuant to this part:*

9 *(1) An action for injunctive relief against any person who is*
10 *reasonably believed to be about to violate or who is violating this*
11 *part.*

12 *(2) An action for a court determination of whether there is*
13 *clear and convincing evidence that a legally incapable person,*
14 *before becoming incapacitated, gave express and informed*
15 *consent to the withdrawing or withholding of hydration and*
16 *nutrition in the applicable circumstances.*

17 *(b) An action pursuant to subdivision (a) may be brought by*
18 *any of the following:*

19 *(1) The spouse, parent, child, or sibling of the legally*
20 *incapable person.*

21 *(2) A current or former health care provider of the legally*
22 *incapable person.*

23 *(3) A legally appointed guardian of the legally incapable*
24 *person.*

25 *(4) A state agency designated by law to make health care*
26 *decisions for the person.*

27 *(5) A public official with appropriate jurisdiction to prosecute*
28 *or enforce the laws of this state.*

29 *(c) The court shall direct that nutrition and hydration be*
30 *provided until the court has reached a final determination, unless*
31 *the court determines that subdivision (c) of Section 4902 applies.*

32 ~~SECTION 1. Section 2357.5 is added to the Probate Code, to~~
33 ~~read:~~

34 ~~2357.5. Notwithstanding any other provision of this part or~~
35 ~~Part 7 (commencing with Section 3200), neither a guardian or~~
36 ~~conservator, nor the court, may authorize the withholding of food~~
37 ~~and water from a ward or conservatee, or an adult without a~~
38 ~~conservator, unless there is clear and convincing evidence of~~
39 ~~either of the following:~~

- 1 ~~(a) The withholding of food and water from the person is in~~
2 ~~accordance with the individual health care instructions, if any, or~~
3 ~~other wishes of the person.~~
4 ~~(b) The person's medical condition renders him or her~~
5 ~~incapable of digesting or absorbing the nutrition or hydration so~~
6 ~~that providing that nutrition or hydration will not contribute to~~
7 ~~sustaining the person's life.~~